

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 578 OF 2006

Uma Sunil Bhaskaran & Ors. ... Petitioners

V/s.

The State of Maharashtra, ... Respondents
and Ors.

AND

WRIT PETITION NO. 579 OF 2006

Gerald Dominic D'Souza and Ors. ... Petitioners

V/s.

The State of Maharashtra, ... Respondents
and Ors.

Mr. Berarwala & Ms. Rohini Dandekar i/b. Berarwala &
Co. for the petitioner.
Mr. H. More, AGP for respondent Nos. 1 & 4.
Mr. G.D. Utangale for Respondent No. 2.
Mrs. P.A. Purandare for respondent No. 3
Mr. J. Rais, Sr. Counsel with Mr. S.K. Sthalekar and
Mr. D.F. Sharma i/b. A.A. Mir for respondent Nos. 5
to 9.

CORAM : F.I. REBELLO,
 ANOOP V. MOHTA, JJ.
DATED : 29th March, 2006

P.C.

. The petitioners herein had earlier filed several petitions before this Court. Those petitions came to be disposed of by order of this Court dated 6th May, 2005 by the learned Single Judge. This Court noted that the grievance of the petitioners is that the developer has not entered into any agreement in

regard to the provisions of transit accommodation and permanent alternate accommodation in respect of hutment dwellers who are found eligible to participate in the scheme of rehabilitation. It is therefore clear that on 6th May, 2005 at least petitioners who had approached the Court were aware that there was an SRA scheme and that there was a developer. The reliefs prayed for were to give them transit accommodation and permanent accommodation which can only be done if there be an S.R.A. scheme in force.

2. An affidavit had been filed on behalf of developer, stating that those who are eligible will be provided with transit accommodation and thereafter permanent alternate accommodation will be provided after the building is ready. On behalf of SRA a statement was made by the learned counsel that authority shall inspect the transit accommodation, which is provided by the developer. Further statement was made that this will be subject to the certification of the transit accommodation by the authority as being fit and suitable for accommodation. A statement was also recorded on behalf of petitioners through their learned Counsel that the petitioners shall amicably, upon such certification, shift to

transit accommodation. This statement made by the counsel before this Court has been recorded in the order of this Court. Further statement was made on behalf of SRA Counsel that extracts of Annexure II in relation to certification by the authority for each of the petitioners shall be furnished to the petitioner within period of one week from the date of the order. That petition was accordingly disposed of.

3. The petitioner thereafter moved this Court by way of Contempt proceedings i.e. Contempt Petition No. 62 of 2005 in Writ Petition No. 1439 of 2005. The contempt petition was by one Jalal D'Souza who is petitioner No. 1 in Writ Petition No. 579 of 2006. Based on the affidavit filed by the developer that the structure No. S-5 has already been allotted to the petitioner, the contempt proceeding was dropped. Similar orders have been passed in respect of other contempt petitions.

4. The present petitioners are the same petitioners who had earlier approached this Court. By this petition the petitioners have prayed that they propose to form a Housing Society and they be permitted to undertake work of construction and other

reliefs. The other reliefs really cannot be gone into, in the exercise of the extra-ordinary jurisdiction of this Court.

5. Question which we have to answer is whether the petitions as filed are maintainable. The petitioners before this Court in the earlier petitions are also petitioners in these petitions. The subject matter was the SRA scheme. In the instant case, petitioners contend that though there is proposed society they should be allowed to form another proposed society. This exercise cannot be done by a Writ Court in the exercise of its extra ordinary jurisdiction. Once a SRA scheme has been sanctioned and petitioners were aware of the same and as they had filed petitions for benefit under the same, if it was their grievance that the scheme as sanctioned was contrary to law or to any provisions of the Act and or fraudulent, it was incumbent upon them to have raised those pleas in the earlier petitions filed by them. It is no answer to contend that the petitioners were wrongly advised. The SRA scheme is for benefit of persons who are eligible and they are entitled to accommodation in the building put up under the S.R.A. scheme. The principles of constructive res-judicata

must apply.

6. The object of the SRA scheme is to provide housing for those who were living in conditions which affected their right to life. Legislature by the Act has provided for better living conditions of those earlier staying in hutments. Courts must note these circumstances while considering a challenge to an SRA scheme. In the earlier petition, the main grievance was that no agreements had been entered into and they were not being given benefit of the scheme. That petition was disposed of based on the statements made. There is no challenge in these petitions that the statements made have not been complied with.

7. It is pointed out to the Court that most of the petitioners had applied to the SRA and their cases have been considered. Some claims have been rejected and they have preferred appeals. The appeals have been disposed of or pending. In other words, eligibility of the parties has been decided by SRA and if any of the parties are aggrieved, the proper remedy is to prefer an appeal or if the appeal is dismissed then they can challenge the order before a competent forum, including this Court.

8. We can take judicial notice that most of the times, these are proxy battles by builders who put up some hutments dwellers to oppose the sanction of the SRA scheme, so that they can get the scheme. We are however clear that on the facts of the present case the principle of constructive res-judicata will govern the matter and it is not open to the petitioners to raise pleas which were available to them in the earlier petitions filed by the same petitioners. The reliefs as otherwise sought for in the petition cannot be granted. If it is the case of the petitioner that the 70% or more are not the members of the society which is registered, then they can make a complaint to SRA which will consider and dispose of the same. Prima facie, there is no material to show that they have the support of 70%. The petition is accordingly disposed of.

[F.I. REBELLO, J.]

[ANOOB V. MOHTA, J.]